

TOXIC SUBSTANCES CONTROL ACT (TSCA)12-3-F. Imminent Hazard Actions1. AUTHORITY.

To commence an imminent hazard action in an applicable District Court of the United States pursuant to Section 7 of the Toxic Substances Control Act; to direct attorneys of the Agency to appear and represent the Administrator in any such action; to request the Attorney General to appear and represent the Agency in Section 7 actions; to negotiate and settle these actions under TSCA.

2. TO WHOM DELEGATED. Director, Land and Chemicals Division.3. LIMITATIONS.

- a. This authority is subject to the limitations of EPA Delegation 12-3-F from Headquarters. See Additional References 5.d. and 5.e.
- b. Exercise of this authority requires the advance concurrence of the Regional Counsel.

4. REDELEGATION AUTHORITY. This authority may be redelegated.5. ADDITIONAL REFERENCES.

- a. Section 7 of TSCA.
- b. The Chapter 12 delegation entitled "Imminent Hazard Determinations" addresses the authority to make an administrative determination that an imminent hazard exists.
- c. The Chapter 12 delegation entitled "Emergency TRO's" covers the authority to refer emergency Temporary Restraining Orders.
- d. The requirement in Headquarters Delegation 12-2-F to consult with the Assistant Administrator for Enforcement and Compliance Assurance may generally be met as follows. (See 5.e., below, for Additional References for cases involving federal entities or federal facilities.) When exercising these authorities, the Region should consult with the Assistant Administrator for Enforcement and Compliance Assurance or designee in the following circumstances: (i) for cases and settlements where the bottom-line penalty is equal to or greater than \$500,000, (ii) where a case or a proposed settlement would not fully comport with applicable penalty policies or recover the full amount of economic benefit, and (iii) in cases that involve nationally significant issues. See Additional References in 5.d.i. through 5.d.iv., below. For settlement agreements involving a bottom-line penalty less than \$500,000, with no nationally significant issues, the Region

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need not consult with the Assistant Administrator for Enforcement and Compliance Assurance, but please see Additional Reference 5.d.v., below.

- i. Memorandum, "OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case Redelegation", from Robert Van Heuvelen, Director, Office of Regulatory Enforcement, dated November 9, 1994.
 - ii. Current list of nationally significant issues under FIFRA, TSCA and EPCRA: "Final List of Nationally Significant Issues and Process for Raising Issues to TPED," Jesse Baskerville, Director, Toxics and Pesticides Enforcement Division, November 1994; "Draft Revision of the Nationally Significant Issues List for TSCA, FIFRA, and EPCRA and Process for Raising Issues to TPED," Ann Pontius, Director, Toxics and Pesticides Enforcement Division, March 5, 2002.
 - iii. Memorandum, "Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 11, 1994.
 - iv. Memorandum, "Redelegation of the Assistant Administrator for OECA's Concurrence Authority in Settlement of Certain Civil Judicial and Administrative Enforcement Actions", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 8, 1994.
 - v. "Delegation of Settlement Authority to Regional Counsel for Administrative Cases with Civil Penalties of less than \$500,000 and No Nationally Significant Issues", available to Region 5 attorneys as Transmittal 11 in the POLICY.OFF folder of the G: drive, at G:\POLICY.OFF\Trans11.wpd.
- e. When exercising the authorities in Section 1 above in actions that involve federal departments, agencies or instrumentalities; federal facilities; or contractor-operators of federal facilities, the Region should also consult with the Federal Facilities Enforcement Office. See Additional References 5.d.i. (p. 5), above, and 5.e.i. through 5.e.iii.
- i. Memorandum, "Guidance on Coordination of Federal Facility Enforcement Actions With the Office of Enforcement," from Thomas L. McCall, Jr., Acting Deputy Assistant Administrator for Federal Facilities Enforcement, dated October 22, 1992.

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- ii. "Coordination of Federal Facility Enforcement Actions with OECA" (Granta Y. Nakayama, November 17, 2006, affirming the continued applicability of the 1992 McCall Memorandum above).
- iii. "Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement and Compliance Assurance" (Michael M. Stahl, September 17, 1997, affirming and reissuing the 1992 McCall Memorandum above).